

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

FIBER TECHNOLOGIES NETWORKS, L.L.C.,)	
)	
Complainant,)	
)	
v.)	D.T.E. 02-47
)	
VERIZON NEW ENGLAND and)	
NORTHEAST UTILITIES SERVICE COMPANY,)	
)	
Respondents.)	
)	

**MOTION TO COMPEL DISCOVERY RESPONSES
AND REQUEST FOR PROCEDURAL SCHEDULE**

Fiber Technologies Networks, L.L.C. (“Complainant” or “Fibertech”), through undersigned counsel, hereby moves the Department for an order compelling Respondents to respond to the Discovery Requests that Fibertech has propounded in this action, and in support thereof states:

Verizon

1. As acknowledged by letter from Verizon’s counsel to Fibertech, a copy of which is attached hereto as Exhibit “A” (the “Verizon Letter”), Verizon received Fibertech’s First Set of Discovery Requests Propounded to Verizon on September 9, 2002.

2. In the Verizon Letter, Verizon states that it “does not intend to take any action at this time to respond to the Requests”.

3. Verizon relies on 220 C.M.R. § 45.06(1) in its assertion that discovery is not yet appropriate under the DTE regulations. However, this is a misinterpretation of the meaning of §45.06(1), which is intended to limit the applicability of § 45.06 to matters where no hearing

will be held, and is not intended to override other DTE Regulations which support the right to a hearing. Specifically, 220 C.M.R. § 45.04(2)(i) states that a complainant must either request a hearing in its complaint or include a statement “that it waives **its right to a formal hearing.**” (emphasis supplied). Similarly, 220 C.M.R. § 45.05(3) provides that a respondent must either request a hearing in its response or include a statement “that it waives **its right to a formal hearing.**” (emphasis supplied). Thus, the DTE Regulations make it clear that a formal hearing is a right which must be affirmatively waived. Fibertech has not waived this right, but has clearly requested a hearing in its Petition for Interim Relief and Complaint.

4. Verizon next states that it has “requested in its answer that the Department dismiss the Complaint” as a reason for declaring that Verizon will not respond to Fibertech’s discovery requests. However, this ignores the clear language of 220 C.M.R. §1.06(c)(3), which states that discovery requests may commence at any time and that the parties “are encouraged to comply voluntarily with any such requests for information before the formal hearing process begins.”

WMECO

5. As acknowledged by letter from WMECO’s counsel to Fibertech, a copy of which is attached hereto as Exhibit “B” (the “WMECO Letter”), WMECO received Fibertech’s First Set of Discovery Requests Propounded to WMECO on September 9, 2002.

6. In the WMECO Letter, WMECO states that “WMECO believes it is inappropriate to respond to these requests at this time.

7. WMECO first cites the current litigation in the Superior Court of Hampden County (the ‘Court’). However, this assertion is misplaced. The Court’s Decision on the Preliminary Injunction (filed with Respondents’ pleadings herein) specifically did not address

Fibertech's preemption and primary jurisdiction arguments that the DTE ultimately has primary jurisdiction over the issues presented in Fibertech's Petition for Interim Relief and Complaint.

See Memorandum of Decision on Plaintiffs' Motions for Preliminary Injunction, P. 6, fn.

4. The Court's Decision was limited to the question of whether it had authority to provide injunctive relief.

8. WMECO also cites the tracking order issued by the Court. However, this ignores the DTE's primary jurisdiction over the issues presented in Fibertech's Petition for Interim Relief and Complaint and the fact that the DTE is required under 220 C.M.R. § 45.08 to resolve this matter within 180 days.

9. WMECO finally cites its "request for dismissal" of this DTE proceeding as a reason for declaring that WMECO will not respond to Fibertech's discovery requests. However, this ignores the clear language of 220 C.M.R. §1.06(c)(3), which states that discovery requests may commence at any time and that the parties "are encouraged to comply voluntarily with any such requests for information before the formal hearing process begins."

Conclusion

Based on the foregoing, Fibertech respectfully requests:

1. That Respondents be compelled to respond to Fibertech's discovery requests;
2. That a Procedural Schedule be issued to insure that this matter is resolved within the time set forth in 220 C.M.R. § 45.08;
3. That the DTE order such other, further and general relief as it deems appropriate.

Respectfully submitted,

FIBER TECHNOLOGIES NETWORKS, L.L.C.
By: Fibertech Networks, LLC, its sole member

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Dated: September 25, 2002

* motion to enroll as counsel *pro hac vice* previously filed

CERTIFICATE OF SERVICE

I hereby certify that on September ____, 2002, I served a copy of the foregoing on the Respondents, by delivering a copy of the same **via email and first class mail** to:

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